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 10 Attorneys for SCOTT K. CANEPA

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 12 **UNITED STATE BANKRUPTCY COURT**  
 13 **DISTRICT OF NEVADA**

14 In re:	)	Case No. BK-S-06-10725-LBR
15 USA COMMERCIAL MORTGAGE COMPANY,	)	Case No. BK-S-06-10726-LBR
16 Debtor.	)	Case No. BK-S-06-10727-LBR
17 In re:	)	Case No. BK-S-06-10728-LBR
18 USA CAPITAL REALTY ADVISORS, LLC,	)	Case No. BK-S-06-10729-LBR
19 Debtor.	)	Chapter 11
20 In re:	)	<b>Jointly Administered Under</b>
21 USA CAPITAL DIVERSIFIED TRUST DEED FUND, LLC,	)	<b>Case No. BK-S-06-10725-LBR</b>
22 Debtor.	)	
23 In re:	)	
24 USA CAPITAL FIRST TRUST DEED FUND, LLC,	)	
25 Debtor.	)	
26 Affects:	)	
27 [ ] All Debtors	)	
28 [x] USA Commercial Mortgage Company	)	Date: June 21, 2006
[ ] USA Securities, LLC	)	Time: 9:30 a.m.
[ ] USA Capital Realty Advisors, LLC	)	
[x] USA Capital Diversified Trust Deed Fund, LLC	)	
[x] USA First Trust Deed Fund, LLC	)	

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 27 **CANEPA OPPOSITION TO**  
 28 **MOTION FOR AUTHORITY TO FORBEAR AND TO PROVIDE FURTHER**  
**FUNDING FOR CERTAIN OUTSTANDING LOANS [Affects USA Commercial**  
**Mortgage Company, USA Capital Diversified Trust Deed Fund, LLC and USA Capital**  
**First Trust Deed Fund, LLC]**

1 SCOTT K. CANEPA, a Direct Lender holding over 51% of the beneficial interest in the  
 2 promissory note secured by deed of trust signed by BOISE/GOWAN, LLC ("Boise/Gowan"),  
 3 submits this Opposition to only the "funding portion" of the Debtors' Motion for Authority to  
 4 Forbear and to Provide Further funding for Certain Outstanding Loans ("Funding Motion"). This  
 5 Opposition is made and based upon the following points and authorities, Mr. Canepa's Motion for  
 6 relief from the automatic stay to terminate the Loan Servicing Agreement with respect to the  
 7 Boise/Gowan loan, reply, supporting declarations, exhibits and the Court's record for the hearing on  
 8 Mr. Canepa's Motion held June 15, 2006 at 10:00 a.m. (Docket 292, 293 632, 636).

9 **POINTS AND AUTHORITIES**

10 1. On June 9, 2006, the Debtors filed their Funding Motion, seeking permission to  
 11 advance \$125,000 from operating cash on deposit in the bank account of USA Commercial  
 12 Mortgage Company ("USA Commercial") in order to fund a loan to Boise/Gowan 93 LLC, an Idaho  
 13 limited liability company ("Boise/Gowan").

14 2. Scott E. Bice is a Commissioner for the State of Nevada, Department of Business and  
 15 Industry, Division of Mortgage Lending ("Division"). Based upon NRS 645B and NAC 645B, the  
 16 Division has primary regulatory authority over NRS 645B mortgage licenses. *See* Bice Opinion  
 17 Letter, Canepa Reply Decl., Docket 636, Exhibit O.

18 3. The Division has imposed significant limits on USA Commercial's mortgage license.  
 19 Attached to the Canepa Reply Decl., Docket 636, as Exhibit K is an authentic copy of Mr. Bice's  
 20 May 1, 2006 Order, and the June 13, 2006 final order issued on behalf of the Division. The May 1,  
 21 2006 Order contains nine pages of factual findings and conclusions of law with respect to USA  
 22 Commercial's myriad and diverse violations of Nevada law, and the Order virtually eliminates USA  
 23 Commercial's future ability to broker loans funded by non-institutional lenders:

24 NOW, THEREFORE, IT IS HEREBY ORDERED that USA  
mortgage broker's license is conditioned upon USA not making any  
loans secured by liens on real property funded by private, non-  
institutional investors; USA may only make loans secured by liens on  
real property funded by institutional investors.

27 Canepa Reply Decl. (Docket 636) Exhibit K, attached, May 1, 2006 Order, p. 10 (emphasis added).

28 4. Based upon the conditions imposed upon USA Commercial's mortgage license, it is

1 not permitted to make the proposed loan to Boise/Gowan from its operating cash.

2 5. Attached to the Canepa Reply Decl. (Docket 636) as Exhibit H is an authentic copy  
 3 of the Boise/Gowan Construction Loan Agreement dated August 26, 2005 which he signed as a  
 4 Direct Lender. Section Three of the Construction Loan Agreement contains the following  
 5 provisions:

6 3.1 Amount of the Loan. Subject to the terms and conditions  
 7 set forth in this Agreement, Lender agrees to make a loan ("Loan") to  
 8 Borrower in a principal amount of Two Million One Hundred Fifty  
 9 Thousand Dollars (\$2,150,000) (the "Loan Amount"). ...

10 3.2 Increase in Loan Amount. From the Effective Date  
 11 through and including August 1, 2006, Lender and USA shall have  
 12 the exclusive right, but not the obligation, to increase the Loan  
 13 amount to an amount not to exceed Two Million Five Hundred Fifty  
 14 Thousand Dollars (\$2,550,000). ...

15 Canepa Reply Declaration, (Docket 636) Exhibit H, attached, pp. 6-7 (emphasis added).

16 6. Mr. Canepa's Loan Servicing Agreement entered into with USA Commercial, Exhibit  
 17 E, see Scott Canepa Declaration in Support of Motion ("Initial Decl.") (Docket 293), contains the  
 18 following provision:

19 Notwithstanding the foregoing or any other provision contained  
 20 herein, USA may not permit any modification to any Loan that would  
 21 ... change the outstanding principal amount, or extend the maturity  
 22 date, without Lender's prior consent; provided, however, if Lender  
 23 fails to grant or deny its consent within three (3) business days after  
 24 notice from USA, Lenders shall be deemed to have conclusively  
 25 given its consent.

26 Initial Decl., DE 293, Exhibit E, p. 3, Section 2(e), last sentence (emphasis added).

27 7. The Special Power of Attorney that Mr. Canepa signed with respect to the Boise  
 28 Gowan Loan, Initial Decl. DE 293, Exhibit F, contains the following provision:

29 The services to be performed are described below: ...

30 (c) To modify and amend the Note or Deed of Trust on such  
 31 terms and conditions as required by the Loan Agreement, subject to  
 32 the provisions of this Declaration.

33 Exhibit F, pp. 1-2 (emphasis added).

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1 8. Mr. Canepa does not consent to an additional advance of \$125,000 to Boise/Gowan.  
2 Canepa Reply Declaration, (Docket 636), ¶12(c).

3       9.       On June 15, 2006, the Bankruptcy Court heard Mr. Canepa's Motion for Relief from  
4 Stay to Terminate Loan Servicing Agreement on Boise/Gowan, and to retain a new loan servicing  
5 agent ("Canepa Motion"). The Canepa Motion was continued to August 4, 2006, at 9:30 a.m. As  
6 a condition of continuing the hearing date to August 4, the Bankruptcy Court ordered the parties to  
7 maintain the status quo on the loan, which includes: (a) no additional advances to the borrower; and  
8 (b) no extension of the August 26, 2006 loan maturity date. This condition requires a denial of the  
9 Funding Motion.

10       10.     Mr. Canepa incorporates herein by reference, as though fully set forth at length, his  
11 points and authorities, declarations and exhibits filed in support of the Canepa Motion (Motion and  
12 Reply), Docket 292, 293, 632, 636.

13 For each of these reasons, and based upon the legal analysis more particularly set forth in the  
14 Canepa Motion, the Funding Motion must be denied.

15 || Dated: June 19, 2006.

Respectfully submitted,

## LIONEL SAWYER & COLLINS

Attorneys for Scott Canepa